
Exhibit “F”

09:40 1 Virginia.

2 MR. CLARK: Good morning. My name is Joseph
3 Clark. I'm joining by way of telephone, counsel for
4 Experian.

5 MS. CRUZ: My name is Patricia Cruz. I'm here
09:40 6 in person in Chicago, at Jones Day, for the
7 defendant, Experian Information Solutions.

8 VIDEO TECHNICIAN: And will the court reporter
9 please identify herself and swear in the witness,
10 please.

11 (Witness sworn.)

12 VIDEO TECHNICIAN: Please proceed.

13 WHEREUPON:

14 PETER HENKE,
15 called as a witness herein, having been first duly
09:40 16 sworn, was examined and testified as follows:

17 EXAMINATION

18 BY MR. BENNETT:

19 Q. Good morning. Mr. Henke, you and I have
20 never met or spoken before today; is that correct?

09:40 21 A. That's correct.

22 Q. And you work for Experian, I understand?

23 A. That's correct.

24 Q. You actually work for the -- for Experian
25 Information Solutions, Inc. That is -- is that the

09:41 1 entity that's on your paycheck?

2 A. Yes. I believe so. I haven't actually
3 seen a paycheck in a long time. It's all electronic
4 now; but, yes.

5 Q. Right. Well, of course you know that
09:41 6 there are multiple Experian entities, including an
7 operations entity, right?

8 A. Correct.

9 Q. And your belief is that you are --
10 technically, that you are employed by Experian
09:41 11 Information Solutions, Inc.?

12 A. Yes, that is my understanding.

13 Q. All right. Could you take a look at
14 Exhibit 1, which is the declaration that has been
15 provided and filed by Experian in this case?

09:41 16 A. Sure. Is it in here?

17 MS. CRUZ: For the record, the witness is
18 turning to Exhibit 1 in the binder provided by
19 plaintiff's counsel.

20 BY MR. BENNETT:

09:42 21 Q. How long -- roughly, how long did it take
22 you to type this?

23 A. I don't have an estimate of the time it
24 take -- it took to type this document.

25 Q. Why not?

09:42 1 A. Because there is a lot that went into it.

2 Q. I understand. Let me -- my questions
3 will get complicated and there will be that time for
4 us to worry about those complications, but I think
5 it's just pretty simple right now. I'm just saying,

09:42 6 how long did it take Peter Henke to type this
7 document?

8 A. Again, I don't have an estimate on the
9 time. I wasn't tracking time, but I personally
10 didn't write the entire document.

09:42 11 Q. Approximately how much of it did you
12 type?

13 A. I'm not --

14 Q. Type. I'll get into the substance, but
15 how much of this did you type?

09:43 16 A. I'm not sure what the percentage would
17 be.

18 Q. Was it more than 10 percent?

19 A. Roughly, in that neighborhood.

20 Q. It was roughly 10 percent of this that
09:43 21 you actually typed?

22 A. That I physically typed, correct.

23 Q. Yes. And, of course, there were lawyers
24 for Jones Day that worked with you on this. And I'm
25 not seeking to discover the conversations, written

09:43 1 or oral, between you and Jones Day. You understand
2 that, right?

3 A. Okay.

4 Q. So besides the lawyers from Jones Day and
5 the 10 percent that you participated in putting
09:43 6 together in typing, who else, if anybody,
7 participated in typing this document?

8 A. I'm not aware of any other parties.

9 Q. Okay. And how -- besides -- you know,
10 I've just used the word typing now. In terms of its
09:44 11 content, other than the Jones Day lawyers in this
12 case, who else did you speak with in putting
13 together this declaration?

14 A. I only spoke with the Jones Day lawyers
15 with regards to this declaration.

09:44 16 Q. And as well as the content or the facts
17 that you outline in the declaration, who else did
18 you speak with besides the Jones Day lawyers to
19 obtain knowledge regarding the substance of the
20 facts that are the substance of this declaration?

09:44 21 A. I would say I spoke with April Turner.

22 Q. And she, of course, is an in-house lawyer
23 for Experian that handles litigation like this one,
24 right?

25 A. That's correct.

09:45 1 Q. Okay. So besides the lawyers that
2 handled this -- are handling the litigation of this
3 case, who did you speak with to obtain the factual
4 knowledge that form the basis of this declaration?

5 A. That was it. To the best of my
09:45 6 knowledge, I didn't speak to anybody else regarding
7 the content of this declaration.

8 Q. Okay. And what documents did you review
9 in creating this declaration?

10 A. In creating it?

09:45 11 Q. Well, by the substance, in order to
12 obtain what you believe -- what you have sworn under
13 oath is your own personal knowledge, what documents
14 did you review --

15 A. See --

09:46 16 Q. -- for this declaration?

17 A. I reviewed agreements.

18 Q. What agreements?

19 A. Between Experian and Advanta. I'm not
20 sure if this counts as documentation, but I reviewed
09:46 21 content within our Siebel system, which is our
22 tracking system.

23 Q. What tracking system is that?

24 A. It's our internal tracking system.

25 Q. What is it called?

09:46 1 A. Siebel.

2 Q. How do you spell that?

3 A. S-I-E-B-E-L.

4 Q. And what is the purpose of that tracking
5 system? What is it used for?

09:46 6 A. It's used for tracking our performance
7 with regards to customer service and retaining
8 contracts and things along those lines.

9 Q. And what information relevant to your
10 declaration was in that Siebel?

09:47 11 A. Well, it's a system that has the account
12 in question within this declaration.

13 Q. Okay. So what type of -- let me --
14 sorry, Jennifer. Withdraw that.

15 Who were the parties -- or, rather,
09:47 16 who was the subscriber for the account in
17 question?

18 A. The client, is that what you mean by
19 "subscriber"?

20 Q. Sure. I mean -- no. Let me withdraw
09:48 21 that. I mean subscriber -- subscriber the way that
22 Experian uses it, subscriber the way that the CDIA
23 uses it, subscriber the way that it's used in the
24 credit reporting industry. Who was the subscriber
25 for the account in question?

09:48 1 A. That would be Advanta.

2 Q. Advanta. What is the actual business
3 name of Advanta?

4 A. I believe there's multiple business names
5 under the Advanta umbrella. There is Advanta
09:48 6 Corp. and there's Advanta Bank Corp. Those are two
7 that I know for sure.

8 Q. Okay. And did you look at the Siebel
9 records for any other subscribers besides Advanta
10 Corp. or Advanta Bank Corp.?

09:49 11 A. Not with regards to this declaration.

12 Q. Mm-hmm. And what types of -- or
13 categories of information are contained within this
14 tracking database with respect to this account as
15 you've described it?

09:49 16 A. Well, like I said, it's a repository for
17 documents; so contracts, letters.

18 Q. All right. Now, does CardWorks also have
19 a separate -- CardWorks or CardWorks Servicing have
20 a separate Siebel record or file?

09:49 21 A. Yes. I believe CardWorks would have an
22 account with -- within Siebel.

23 Q. And did you review that in preparing your
24 declaration?

25 A. I've reviewed the CardWorks account, but

09:50 1 I don't recall reviewing it for the purpose of this
2 declaration.

3 Q. Well, then why would you have reviewed
4 the CardWorks account?

5 A. I would have been on the account for
09:50 6 other purposes, such as if we received a request for
7 contracts or so on.

8 Q. Do you know that I have a Sears credit
9 card? Do you know that?

10 A. I did not know that.

09:50 11 Q. I do. I got it to purchase a
12 refrigerator for -- a freezer, actually, for an
13 older couple that watches our child. Did you know
14 that?

15 A. I was unaware.

09:50 16 Q. Do you have a Sears credit card?

17 A. No, not that I'm aware of.

18 Q. You are the director of management for
19 Experian, right?

20 A. I'm sorry. Did you say director of
09:51 21 membership or director of management?

22 Q. I'm sorry, membership.

23 A. Yes. I'm the director of membership.

24 Q. Are you the only director of membership?

25 A. Yes.

09:51 1 Q. To whom do you report?

2 A. I report to Sandy Anderson.

3 Q. What is Sandy Anderson's job?

4 A. I believe her specific title is president
5 of sales operations.

09:51 6 Q. And you believe she works for Experian
7 Information Solutions, Inc., also?

8 A. That is correct.

9 Q. And do you know what she does, what her
10 function is?

09:51 11 A. She's the president that oversees the
12 various support areas that help to support our
13 clients.

14 Q. Okay. And then what's your job as
15 director of membership?

09:51 16 A. I oversee the membership department.

17 Q. Okay. And who do you directly supervise?

18 A. I supervise a number of employees. Are
19 you requesting their names or --

20 Q. Well, let's start with number.

09:52 21 Approximately how many?

22 A. 15.

23 Q. All right. What are their names and what
24 are their jobs?

25 A. Let's see. Chris Maieritsch, who is an

09:52 1 associate manager; Katie Muzik, who is a senior
2 specialist; Lisa Van Brunt, a Membership Analyst
3 Level 2; Megan Brody, a Membership Analyst Level 2;
4 Elizabeth Barcynski, also a Membership Analyst
5 Level 2; Marianne Trejo, an Analyst Level 1;

09:53 6 Jessica -- Jessica Podmokly, an Analyst Level 1.

7 And, actually, those are under direct
8 supervision that indirectly supervise the remaining
9 employees. They directly report to Chris
10 Maieritsch.

09:53 11 Q. Okay. What is the job of an analyst?

12 A. An analyst?

13 Q. Yes.

14 A. Their job is to review new client
15 applications and determine the client's eligibility

09:54 16 for an Experian account.

17 Q. Okay. Which of those individuals would
18 have been responsible for overseeing, either
19 directly or indirectly, the CardWorks Servicing
20 client?

09:54 21 A. I do not recall specifically which
22 analyst would have reviewed that. That may not have
23 been any of those analysts depending on when they
24 were on boarded and employment.

25 Q. Now, again, back on track, if we just

09:54 1 clarify that I had a Sears credit and I bought a
2 freezer using that Sears credit card, do you have
3 any knowledge about Sears as a client?

4 A. No. I'm not familiar with Sears as a
5 client.

09:54 6 Q. How about JCPenney?

7 A. I'm also not familiar with their account
8 as a client.

9 Q. Why aren't you familiar with Sears as a
10 client?

09:55 11 A. In our membership role, we determine
12 eligibility for new clients. Once they become
13 clients, we don't manage the relationship on an
14 ongoing basis.

15 Q. Okay. Well, I'll let you in on another
09:55 16 secret here. It turns out when I applied for a
17 Sears credit card, it wasn't Sears that gave me
18 credit. It was a bank. It was a credit card
19 company. Would that surprise you?

20 A. No.

09:55 21 Q. Why not?

22 A. I don't think that's uncommon for a bank
23 to fund a private label credit card.

24 Q. And when banks do that, when they fund a
25 private label credit card, in what name is the trade

09:56 1 line published to consumers? So, for example, if
2 you have a Citibank or a Chase account -- my Best
3 Buy card is through -- jeez, I think it's either
4 through Chase or through Barclay. They might have
5 changed. But in whose name does that show up in a
09:56 6 credit report?

7 A. Well, that could vary.

8 Q. What do you mean it could vary?

9 A. It could vary depending on the
10 circumstances of that particular account.

09:56 11 Q. Can you tell me what circumstances would
12 determine whether it was furnished in one name
13 versus another?

14 A. A circumstance could be, if the lender
15 feels that a particular name might be more or less
09:57 16 confusing to a consumer if they were to see it on
17 their consumer report, so they would recommend a
18 recognizable name.

19 Q. You say "they," who do you mean by they,
20 they would recommend a recognizable name?

21 A. They would be the client.

22 Q. So assume that I had -- for a long time,
23 Sears accounts were through Citibank, okay. Now,
24 I'll just refer to it as Citi, C-I-T-I.

25 A. Okay.

09:58 1 Q. And so if I had a Sears account with
2 Citi, which of those do you -- does Experian believe
3 would be more recognizable to me who applied at
4 Sears for such a card, Sears or Citi? What should
5 be in my credit report?

09:58 6 A. It could be either or both, because --

7 Q. I understand. I'm talking about in
8 accordance with Experian's procedures.

9 A. Okay.

10 Q. Your policy, which should it be?

09:58 11 A. And your -- in your scenario, you are
12 Citi requesting this account?

13 Q. I applied at Sears. I fill out the
14 application. The Sears salesman puts it in his
15 antiquated computer, by the way, and calls it on the
09:58 16 telephone. In whose name should that account be
17 reported in my Experian consumer disclosure -- Citi,
18 Sears or both -- if you were following Experian's
19 procedures and policies?

20 A. Right. Well, that's why I was asking who
09:59 21 is reporting the account to Experian. If it was
22 Sears -- I'm sorry.

23 If it was Citi requesting the account to
24 report your data under, we would initially put it
25 under Citi unless Citi were to advise us that the

09:59 1 credit card that you were using has the name Sears
2 all over it. And so Sears would need to be
3 reflected on that trade line so that you wouldn't be
4 confused if you saw it on your credit report.

5 Q. Okay. And but -- so let's assume,
09:59 6 because it does, by the way, have Sears all over it,
7 it doesn't have Citi on the front anywhere. You've
8 got to look on the really back print to see
9 whether -- I can't remember whether it's Chase or
10 Citi now, but you have to look on the back strip of
09:59 11 it.

12 Under such a circumstance, where there is
13 Sears all over my credit card, then are you saying
14 that Experian's policy would put it under Sears and
15 not under Citi, or are you saying it should be, if
10:00 16 they were following your procedures, both?

17 A. I would say our standard practice would
18 be -- would be to list the name as the -- our
19 client, who, in this case, it sounds like would be
20 Citi, and we would only alter that at the request of
10:00 21 the client if they suggested that it would alleviate
22 confusion to the consumer.

23 So, initially, it would be Citi and then
24 upon request we could alter it to accommodate the
25 requester in, you know, with the purpose of

10:01 1 alleviating confusion.

2 Q. So my analogy in this case -- well,
3 before we get to that analogy, you said that you
4 were asking a necessary fact, which is, which
5 entity, Sears versus Citi, would actually be doing
10:01 6 the credit reporting to Experian, right? Is that
7 what you were asking me?

8 A. That's correct.

9 Q. And why is that important?

10 A. Because we would need to know who our
10:01 11 contract was with and where the data was coming in
12 from.

13 Q. And why is that important?

14 A. Well, it's mostly important for the
15 contractual purposes because that's going to be the
10:01 16 entity that is responsible for providing us with
17 accurate data.

18 Q. And so, in that circumstance, between
19 Sears and Citi, who was the source of the
20 information that had been provided to Experian in my
10:02 21 credit report account or trade line?

22 A. Could you define source for me? I don't
23 think I follow the question.

24 Q. Mm-hmm. Is that -- do you think source
25 is a complex word?

10:02 1 A. I think it could be.

2 Q. Why could it be?

3 A. Well, because in your scenario you stated
4 you initiated an account with Sears.

5 Q. Mm-hmm.

10:02 6 A. And --

7 Q. How about this?

8 A. And the funder of the account was Citi,
9 and you didn't exactly outline who was going to
10 contract with Experian. I made an assumption it
10:03 11 would be Citi.

12 Q. Well, right. So in that circumstance,
13 the subscriber -- the entity that had the contract
14 with Experian -- would be Citi and Citi would be the
15 entity that was submitting monthly metro credit
10:03 16 reporting data to Experian about my trade line. So
17 under that circumstance, which is the source or who
18 was the source of the information?

19 A. Again, it sounds like the account
20 originated with Citi as well. I would describe them
10:03 21 more as a furnisher.

22 Q. So what is the furnisher?

23 A. The furnisher would be the entity that --
24 that has the account to provide data to Experian.

25 Q. Can you turn to Exhibit 17?

10:04 1 A. Yes. I'm here.

2 Q. Sorry. All right. You know, I'm taking
3 us too off track here, so you can close Exhibit 17
4 and go back to Exhibit 1. I'm just overly
5 exuberant.

10:05 6 I'm back to Exhibit 1 now --

7 A. All right. I'm there.

8 Q. -- the declaration. And, again, I'm at
9 the first page. And in the first paragraph, you
10 state, "The facts stated in this declaration are
10:05 11 true of my own personal knowledge, including
12 knowledge acquired in the course and scope of my job
13 responsibilities and through the review of pertinent
14 documents maintained as business records by Experian
15 in its course and scope of Experian's business."

10:05 16 I'm going to go through the declaration
17 and I would ask -- at certain points I'm going to
18 ask you where you get this knowledge from. Do you
19 see where it says, "personal knowledge"? Personal
20 knowledge would be -- and this is just me talking
10:06 21 because I can. I'm running up my tab with Mike and
22 with Jennifer.

23 But personal knowledge does not mean
24 knowledge that isn't your own. And so I'm going to
25 ask, as we go through, whether you got the knowledge

10:06 1 because it is your personal knowledge or whether you
2 obtained it from documents you reviewed to prepare
3 this declaration. Okay?

4 A. Okay.

5 Q. So, now, I want to go to the second
10:06 6 paragraph -- no, skip to the third. The third
7 paragraph, it says, "There are five primary roles in
8 the modern credit reporting system," and then you
9 list five. Did you type this sentence?

10 A. I did not.

10:07 11 Q. And what's your background in
12 understanding the Fair Credit Reporting Act?

13 A. My background in understanding it? I'm
14 familiar with the Fair Credit Reporting Act. Most
15 specifically, I would say the sections regarding
10:07 16 permissible purpose on which clients -- which helps
17 to outline which clients might be eligible to
18 inquire on credit reports.

19 Q. Okay. And under the Fair Credit
20 Reporting Act, there is a -- you use the word
10:07 21 subscriber, but the Fair Credit Reporting Act uses
22 the word user.

23 Have you ever used the word user to
24 describe the role of a party in the modern consumer
25 credit reporting system?

10:08 1 A. Not generally, but I probably have with
2 regards to the discloser for users.

3 Q. Okay. So when it says "furnisher" --
4 and, again, in your sentence, you have furnisher --
5 there is a separate section of the Fair Credit

10:08 6 Reporting Act that governs the obligations of a
7 furnisher. Have you reviewed or read that section?

8 A. I don't recall that section at this
9 moment.

10 Q. There is also a section that governs what
10:08 11 a credit reporting agency or consumer reporting
12 agency, such as Experian, has to do when a consumer
13 makes the dispute. Have you reviewed that section?

14 A. No, I have not.

15 Q. And then there is a section regarding
10:09 16 what information has to be provided in a consumer's
17 consumer disclosure. When a consumer wants to see a
18 copy of their file at Experian, there is a section
19 that governs the contents of that. Have you
20 reviewed that section?

10:09 21 A. I have not.

22 Q. So I can help you a little bit.

23 A. Okay.

24 Q. I won't even charge you for this
25 knowledge. I wouldn't call it legal advice. But if

10:10 1 you want to turn to Exhibit 15 -- Exhibit 15,
2 please.

3 A. I'm here.

4 Q. And where did you go to college,
5 Mr. Henke?

10:10 6 A. I went to Roosevelt University.

7 Q. And did you get a degree?

8 A. I did.

9 Q. What is the degree in?

10 A. A bachelor's of science in business
10:10 11 management.

12 Q. And did you take any postgraduate
13 education?

14 A. I have not.

15 Q. When did you obtain your degree?

10:10 16 A. I believe that was in 2001 -- I'm sorry.
17 Excuse me. In '91.

18 Q. How old are you now?

19 A. I'm 43.

20 Q. And what city -- what city and state do
10:11 21 you reside?

22 A. I reside in Cary, Illinois.

23 Q. Do you work out of your home or is there
24 an Experian office in Cary, Illinois?

25 A. I work out of the Experian Schaumburg

10:11 1 office mostly.

2 Q. And how many other people work there
3 besides you, roughly?

4 A. It would just be a guess, but it would --
5 I would guess, maybe, 500.

10:11 6 Q. And what is the purpose or function or
7 primary purposes or functions of that Experian
8 location?

9 A. I would not say that it has a designated
10 function other than as a credit bureau, and it also
10:12 11 houses some of the other Experian entities you spoke
12 of. For instance, Experian Marketing Solutions is
13 out of that office to some degree.

14 Q. Now, back at Exhibit 15 -- you're not a
15 lawyer, right?

10:12 16 A. That's correct.

17 Q. Have you ever read the Fair Credit
18 Reporting Act?

19 A. I've read sections, not the act in its
20 entirety.

10:12 21 Q. So this is the text of a section that --
22 what's been codified or the way that it's in the law
23 books now -- sometimes you refer to sections
24 differently at Experian. But in this instance, the
25 code section is -- the way lawyers would say it to

10:13 1 courts -- 15 U.S. Code Section 1681g. So I'm going
2 to refer to this as 1681g. And, it says, 1681g --
3 and the title of this section is, "Disclosures to
4 Consumers." Do you see that?

5 A. I do.

10:13 6 Q. Have you read this section before today?

7 A. Not that I recall, no.

8 Q. All right. And then, if you look below
9 that box, there is -- it starts with the little
10 letter "a," subsection "a," do you see that?

10:13 11 A. Yes.

12 Q. All right. And, it says, "Every consumer
13 reporting agency shall upon request" -- and I'll
14 skip the material part -- "so every consumer
15 reporting agency shall, upon request, clearly and
10:13 16 accurately disclose to the consumer, one, all
17 information in the consumer's file at the time of
18 the request, and, two, the sources of the
19 information."

20 And Joe and Patricia can interrupt if
10:14 21 I've mischaracterized this, but I think the
22 additional text that I've skipped over is not part
23 of what we're litigating in this case.

24 So simplifying it to the material
25 language, every consumer reporting agency shall,

10:14 1 upon request, clearly and accurately disclose to the
2 consumer all information in the consumer's file at
3 the time of the request and the sources of the
4 information. Do you follow me?

5 A. I believe so.

10:15 6 Q. So, in this case, CardWorks opened a new
7 subscriber relationship related to the Advanta
8 portfolio with Experian, correct?

9 A. I'm sorry. Can you repeat that?

10 Q. Sure. In this case, CardWorks Servicing
10:15 11 opened a new subscriber relationship related to the
12 Advanta accounts with Experian, correct?

13 A. I believe, in this case, the new account
14 was opened under Advanta with CardWorks Servicing as
15 their servicer.

10:16 16 Q. Well -- so which subscriber agreement
17 governs the relationship -- well, let me step back.
18 You obtained subscriber agreements with
19 each of your clients, correct?

20 A. We do.

10:16 21 Q. Yes. And those subscriber agreements
22 govern what I'll characterize as two types of
23 relationships. One, they govern the relationship
24 that you have said you're familiar with, the
25 impermissible pool section, the relationship by

10:16 1 which a client of Experian's is permitted to buy a
2 credit report or a score or related product from
3 Experian, right?

4 A. That's correct.

5 Q. All right. And then -- and that, in
10:17 6 fact, is where Experian makes most of its money,
7 right?

8 A. Yes.

9 Q. But these subscriber or client
10 agreements, they also govern the relationship with
10:17 11 the client and the client's role as a furnisher and
12 the client's role furnishing credit information
13 about consumer's trade lines to Experian, right?

14 A. Correct.

15 Q. So in this case, there was an account
10:17 16 that had originated, in however fashion -- through
17 trust, through servicing, whatever -- from Advanta
18 Bank. You understand that, right?

19 A. I'm sorry. Could you repeat that again?
20 I'm sorry.

10:18 21 Q. Sure. There was an account regarding
22 Mr. Dreher that, at some point, had originated prior
23 to Advanta shutting down, had originated through
24 Advanta Bank -- through the trust, or through
25 Advanta Bank, or whatever, right?

10:37 1 that mortgage loans or mortgage lending is
2 structured?

3 A. Yes.

4 Q. Let me try it a little differently. Do
5 you know -- does the word securitization mean
10:37 6 anything for you other than it's not in Jennifer's
7 dictionary or database?

8 A. Yes. I'm familiar with that.

9 Q. What is your understanding of that?

10 A. Securitization, it would be that mortgage
10:37 11 loans are packaged up and sold as investments,
12 securitized.

13 Q. So my loans, I should just stop and make
14 my credit report an exhibit for you. But I have a
15 loan, a small loan, still left with Wells Fargo
10:38 16 Bank. Wells Fargo is my -- is shown in my trade
17 line, and Wells Fargo is the entity to whom I write
18 a check -- or Wells Fargo is simply a mortgage
19 servicer. They don't own my loan.

20 I've just described how my loan is set
10:38 21 up. Do you have any experience, as an Experian
22 membership director, that would inform us as to the
23 mortgage industry, more generally, this way of
24 structuring with servicers and investors and the
25 transfers of mortgages?

10:39 1 A. Yes. What you've described I was
2 familiar with.

3 VIDEO TECHNICIAN: Pardon me, Counsel. This
4 is the videographer. We're going to need to take
5 just a moment to change tapes.

10:39 6 MR. BENNETT: Thank you.

7 MS. CRUZ: Would this be a good time for a
8 break? It's been over an hour.

9 MR. BENNETT: Sure, whenever you want.

10 VIDEO TECHNICIAN: We're going to go off the
10:49 11 record. The time is 10:39 a.m. This is the end of
12 Tape No. 1.

13 (A recess was had.)

14 VIDEO TECHNICIAN: Okay. We're going back on
15 the record. This will be the beginning of Tape
10:50 16 No. 2. The time is 10:49 a.m. Counsel.

17 BY MR. BENNETT:

18 Q. Thank you. If you could turn to
19 Exhibit 4.

20 A. Yes. I'm there.

10:50 21 Q. Actually, you know what? I'm going to
22 skip ahead to Exhibit 9.

23 A. I'm there.

24 Q. And I'm disappointing you, Mr. Henke,
25 because I'm not -- I'm going to skip back to 4.

10:50 1 A. 4?

2 Q. I'm testing you.

3 A. Did he say 4?

4 Q. Back at 4, it's a small e-mail chain.

5 All of the substance is on Bates No. 172. If you
10:51 6 want to read that page and let me know when you've
7 done so on Exhibit 4.

8 A. Okay. I've read it.

9 Q. Now, the uses -- these e-mails --
10 Mr. Kilka's e-mail uses the word sub code. What is
10:51 11 sub code?

12 A. Sub code, that was the number you
13 referred to earlier. It's short for a subscriber
14 code. Essentially it's an account number for a
15 client.

10:52 16 Q. And each client will have their own
17 account number, right?

18 A. A client can have multiple subscriber
19 codes.

20 Q. Okay. But, I guess, the point is that
10:52 21 the account number is attributed to a specific
22 client of Experian's as opposed to a portfolio or
23 where an account is originated?

24 A. That's correct. It indicates the client.

25 Q. And so, in this instance, there was a

10:53 1 discussion where Mr. Kilka is asking CardWorks,
2 Experian is asking CardWorks, how CardWorks wants
3 the trade lines for their new subscriber code to
4 show, right?

5 A. They're asking CardWorks how they want
10:53 6 the subscriber name to display on this account,
7 that's correct.

8 Q. That's right. And Exhibit 172 on page --
9 I'm sorry. Exhibit 42, on page 172, Mr. Kilka asks,
10 "Today your other subscriber codes show as
10:53 11 Siebel/CWS to consumers and creditors. Do you want
12 CWS on the end of Advanta credit cards." Do you see
13 that?

14 A. I do.

15 Q. So, I mean, in theory, if CardWorks
10:54 16 requested this, Experian, following its procedures,
17 could have furnished the trade line as Advanta
18 Credit Cards/Cardworks Servicing, right?

19 A. Are you saying we could have displayed it
20 that way?

10:54 21 Q. Yes, you could have.

22 A. That's correct.

23 Q. Why didn't you?

24 A. Because we relied on the -- this
25 individual at CardWorks to provide us with the best

10:54 1 name.

2 Q. So, in your declaration, you have -- you
3 referenced the procedure, the general unwritten
4 policy, about -- you know, that governs the way a
5 trade line is displayed.

10:55 6 Would it be a fair description of that
7 policy to state that Experian's policy for how a
8 trade line is to be displayed is to defer to the
9 furnisher's, the subscriber client's, decision as to
10 how to display that trade line?

10:55 11 A. I wouldn't refer to it as a policy. I
12 would say, as a practice, we would enter the
13 entity's name unless the client has reason to alter
14 it or to have a different name posted.

15 Q. That's right. But it is not a policy of
10:55 16 Experian's that the client state the reason or
17 provide the explanation for why it wants a
18 particular name displayed as the trade line, right?

19 A. It is not a policy.

20 Q. And so, in this instance, it appears --
10:56 21 from this e-mail, in fact -- Experian never even
22 asked why CardWorks didn't want its own name shown
23 anywhere in the trade line, right?

24 A. It doesn't appear that we asked that
25 question in this e-mail chain.

10:56 1 Q. And that is not -- that manner of
2 determining the trade line that would be displayed
3 to consumers, that is the ordinary process by which
4 Experian would make that determination, right?

5 A. I'm sorry. Could you repeat that
10:57 6 question?

7 Q. Sure. In this e-mail chain, it
8 demonstrates a process that Experian used to
9 determine what it would list in the trade line as
10 the identity of the subscriber or the furnisher,
10:57 11 right?

12 A. In this e-mail? Yes.

13 Q. Yes.

14 A. Yes.

15 Q. And the -- there is nothing in here that
10:58 16 is particularly out of the ordinary or surprising to
17 you as the way in which that trade line identity
18 would be determined, right?

19 A. I would say, no, there is nothing
20 surprising in this e-mail.

10:58 21 Q. And this is the manner in which -- this
22 is fairly typical of the manner in which Experian
23 would determine what the name of the furnisher or
24 how the name of the furnisher or subscriber would be
25 displayed in a trade line, correct?

10:58 1 A. I don't know if I would say this was
2 typical. In my practice, I would typically have a
3 conversation and explain the intent of that name to
4 be recognizable to the consumer. I don't know if
5 James did that outside of the e-mail or if that was
10:59 6 just assumed within the e-mail, so...

7 Q. But if the subscriber still wanted it
8 displayed to -- if a servicer subscriber still
9 wanted it displayed to omit any mention of the
10 identity of the servicer, Experian's practice would
10:59 11 be to allow that subscriber to make that decision,
12 right?

13 A. We could accommodate such a request, yes.

14 Q. Are you aware of any circumstance in
15 which a subscriber told Experian how it wanted a
10:59 16 trade line displayed and then Experian would not
17 agree to that subscriber request?

18 A. I do recall that happening, but I cannot
19 recall the name of an entity specifically that
20 that -- the scenario you described -- occurred with.

11:00 21 Q. Approximately how many -- well, let me
22 say this.

23 Approximately how many times -- you just
24 said you recall it happening. You recall it
25 happening once or more than once?

11:00 1 A. More than once.

2 Q. How often does it occur that Experian
3 would not agree to display the trade line, however
4 it is that the servicer/subscriber wanted?

5 A. Well, it would -- how often? It would
11:01 6 not be frequent.

7 Q. In looking at this process in this case,
8 which is -- I think this e-mail is a focus on how
9 that trade line display occurred, is there anything,
10 any mistake of which you're aware, that Experian
11:01 11 made in determining what or how the trade line for
12 these accounts for Mr. Dreher would be displayed?

13 A. Are you pointing to this e-mail again?

14 Q. Well, I'm using the e-mail. But in this
15 instance, the relevant trade lines in this case for
11:02 16 Mr. Dreher did not display CardWorks, CardWorks
17 Servicing, CWS, or anything other than Advanta Bank
18 or Advanta Credit Cards, correct?

19 A. That's my understanding, yes.

20 Q. And that is the way that Experian
11:02 21 intended, correct?

22 A. I would say we did accommodate this
23 request.

24 Q. That's right. But it wasn't a mistake?

25 A. Yes.

11:44 1 your additional due diligence and I appreciate that.

2 BY MR. BENNETT:

3 Q. Now, Mr. Henke, if we could now turn to

4 Exhibit 5. And this is a little bit of a longer

5 e-mail chain, so I'm actually going to start at

11:44 6 page 217 -- Bates No. 217, rather, on the bottom

7 right. This is about five pages in, four pages in.

8 A. Yeah. I'm there.

9 Q. And you've now had a chance to read

10 these. In this break, you've read these e-mails,

11:45 11 right?

12 A. That's correct.

13 Q. So I'm now starting with the James Kilka

14 to Brian Bennett e-mail, October 21, 2010, at

15 1:30 p.m. And, it says, "I spoke to our client

11:45 16 support area." That is not membership, right? It's

17 a different department?

18 A. That's correct.

19 Q. It's not your department, right?

20 A. Yes.

11:45 21 Q. And then there is this description that

22 says, "You will essentially close the trade lines or

23 the trades on the old sub code and mark them

24 transferred and then begin to report them under a

25 new sub code." Do you see that?

11:45 1 A. I do.

2 Q. Now -- now that you've had an
3 opportunity, by the way, to review these e-mails and
4 additional exhibits, do you still believe that this
5 new subscriber code was reported to Experian under
11:46 6 the governance of the subscriber agreement executed
7 by Advanta Bank Corp.?

8 A. I would have to give that more thought.
9 The subscriber code was set up under the Advanta
10 Bank Corp. Company ID, which would imply that it
11:46 11 falls under the Advanta Bank Corp. contract.

12 Q. But if you'll take a look at 217,
13 Mr. Kilka explains --

14 A. Mm-hmm.

15 Q. -- "I've spoken to our client support
11:46 16 area, and the information I shared around not being
17 able to move the sub code under your company ID was
18 accurate. You will essentially close the trades on
19 the old sub code, mark them as transferred, and then
20 begin to report them under a new sub code."

11:47 21 A. Correct.

22 Q. And is that what happened?

23 A. I don't -- it doesn't appear that it was
24 executed as he described here; but with regards to
25 the company ID, they did remain under the Advanta

11:47 1 Company ID.

2 Q. Now, you require -- Experian requires a
3 subscriber agreement to govern the ability or right
4 to pull or obtain some consumer's credit file,
5 right?

11:48 6 A. Correct.

7 Q. And, in fact, the one area of the SCA
8 that you recall reading or knowing was impermissible
9 pulls; that is, when Experian is allowed to sell a
10 report to a particular client, right?

11:48 11 A. Yes.

12 Q. So if, in this instance -- and, also, by
13 the way, recall that we know now that with
14 bull's-eyes you can only pull a bull's-eye for your
15 own trade lines, right?

11:48 16 A. For trade lines that you reported, yes.

17 Q. So, in this circumstance, there certainly
18 would have had to be a client or subscriber
19 relationship between CardWorks and Experian, right?

20 A. When you say "this particular
11:49 21 relationship," you mean the subscriber code?

22 Q. Yes.

23 A. 172? I would say, yes, either directly
24 or indirectly. Meaning, it could be an agent
25 agreement.

11:49 1 Q. And are you aware of any agency
2 relationship agreement, rather, between Advanta Bank
3 Corp. and CardWorks Servicing?

4 A. I don't recall that agreement.

5 Q. Are you aware that Advanta Bank was,
11:49 6 itself, only a servicer of this credit card
7 portfolio?

8 A. I was aware they serviced. I didn't know
9 they were only a servicer.

10 Q. Only a servicer. Well, you discuss,
11:50 11 don't you, the trust in your declaration?

12 A. I'm sorry?

13 Q. Well -- well, so I'm looking at your
14 declaration now. You actually -- you don't have any
15 personal knowledge as to whether Advanta Bank Corp.
11:50 16 actually was an original credit grantor as opposed
17 to a servicer, do you?

18 A. No.

19 Q. And you don't actually know who the
20 actual owner of these accounts that Experian labeled
11:51 21 as Advanta credit card accounts, you don't actually
22 know who the owner of those accounts is, do you;
23 you, personally?

24 A. I was under the understanding that
25 Advanta was.

11:51 1 Q. And where did you get that understanding
2 from?

3 A. Because we engaged with Advanta for our
4 agreements.

5 Q. Okay. Now, if Advanta Bank Corp. was not
11:51 6 the owner of the accounts and was, instead, only a
7 servicer, when servicing was transferred to
8 CardWorks Servicing, what should the trade line have
9 stated?

10 A. That would depend on what the client felt
11:52 11 was -- would cause less confusion to the consumer.

12 Q. Right. Well -- all right. Do you know
13 that my client was an identity theft victim who
14 never actually applied for any account with Advanta?
15 Are you aware of that?

11:52 16 A. I was told that, yes.

17 Q. Mm-hmm. So given that he had no previous
18 relationship with Advanta, how would including the
19 name Advanta have helped a consumer, an identity
20 theft victim, such as my client?

11:52 21 MS. CRUZ: You should answer the question if
22 you have knowledge of the information.

23 BY THE WITNESS:

24 A. Yeah. I'm not sure. Not having been an
25 identity theft victim, I don't know how it would

11:56 1 ID, right?

2 MR. CLARK: Len, I want to object to form.

3 You said the phrase understood again. This is

4 Henke, not Kilka.

5 MR. BENNETT: I'm talking about Experian as a

11:57 6 managing agent, even if he's not a 30(b)(6)

7 designee.

8 BY MR. BENNETT:

9 Q. Mr. Henke, so if you were reading these

10 e-mails and trying to discern, as an Experian

11:57 11 membership director, the -- Experian's intent, you

12 would agree that it appears, from these e-mails,

13 that Experian had intended to create the new

14 subscriber code connected to CardWorks Servicing's

15 company ID, not Advanta's company ID, correct?

11:57 16 A. Actually, my understanding is that that

17 was the request, but that Experian was leaving the

18 new subscriber code under the Advanta company ID but

19 attempting to find a way for the servicer, being

20 CardWorks, to have access to it.

11:58 21 VIDEO TECHNICIAN: You know, pardon me,

22 Counsel. Counsel --

23 BY MR. BENNETT:

24 Q. Advance then to --

25 MS. CRUZ: Len, the videographer is trying to

11:58 1 make a statement.

2 VIDEO TECHNICIAN: Yeah. I'm sorry, Counsel.

3 We'll need to take just a moment to change tapes.

4 MR. BENNETT: All right. Thank you.

5 VIDEO TECHNICIAN: This will be the end of

11:59 6 Tape No. 2. We're going off the record at

7 11:58 a.m.

8 (A recess was had.)

9 VIDEO TECHNICIAN: This is the beginning of

10 Tape No. 3. The time is 11:58 a.m. Please proceed.

11:59 11 BY MR. BENNETT:

12 Q. So, Mr. Henke, I think you're right. I'm
13 now continuing on Exhibit 5. And if I could take
14 you to page 214, which is the second from the top --

15 A. I'm sorry. 214, did you say?

11:59 16 Q. That's right.

17 A. And which paragraph?

18 Q. Well, Mr. Kilka, our experienced
19 employee, is now in the 1207 e-mail, October 29,
20 communicating with CardWorks and saying -- asking,

12:00 21 "Are these trades still going to be updated by
22 somebody on an ongoing basis? Is the Advanta trust
23 going to be the one to handle the reporting. It
24 seems that you will act as an agent to servicing
25 agent. And this ties us back to the form I've

12:00 1 provided to Maria at the beginning of this all."

2 And then right above it, Mr. Kilka
3 then -- Experian, then says, "You mentioned a trust.
4 Do you have a contact at whomever -- whomever that
5 truly is?" And you understand that, right, those

12:01 6 exchanges?

7 A. I see them, yes.

8 Q. Now, if you'll turn to the very top page
9 with that context, Bates No. 217 of Exhibit 5, can
10 you read the e-mail from CardWorks back to

12:01 11 Experian's employee, James Kilka, at the bottom?

12 MS. CRUZ: To clarify, Len, are you referring
13 to Bates No. 213 or 217?

14 MR. BENNETT: 213, sorry.

15 MS. CRUZ: Okay.

12:01 16 BY THE WITNESS:

17 A. The November 4th e-mail.

18 Q. Yes.

19 A. It says, "James, the owner of the Advanta
20 accounts is Vion Holdings II, LLC. Thanks. Gina."

12:01 21 Q. So with that knowledge, how would that be
22 material to Experian's existing practice or
23 procedure for reporting the source of information of
24 the trade line?

25 A. Based on this content?

12:02 1 Q. Yes.

2 A. I would say we would try to obtain an
3 agreement with Vion Holdings and move -- or obtain
4 an agency addendum for CardWorks as an agent for
5 Vion Holdings.

12:02 6 Q. And, in fact, you've seen the subsequent
7 exhibit, Exhibit 7, which you can turn to now, two
8 exhibits later.

9 A. I'm on 7.

10 Q. And, apparently, there was now an
12:03 11 agreement that Vion was asked to sign but then had
12 edited a separate membership agreement, right?

13 A. It appears that way, yes.

14 Q. Now, if you could then turn to Exhibit 8,
15 there is a document attached to this e-mail, a
12:03 16 couple of documents. Can you explain these to me?

17 A. The first document is --

18 Q. Sure.

19 A. -- an application for an authorized agent
20 or third-party processor, and it's completed by
12:03 21 CardWorks Servicing.

22 Q. What is this document used for?

23 A. This would be used for an agent or a
24 third-party processor that wants to apply to become
25 an authorized agent or third-party processor.

12:04 1 Q. What is the third-party processor as
2 opposed to an agent? What's the difference?

3 A. Typically, a third-party processor would
4 look more like a software vendor or a pass-through,
5 whereas an agent would handle the data with regards
12:04 6 to reporting. For instance, a processor, a data
7 processor, may pass the data to Experian, but would
8 not handle disputes, whereas an agent would handle a
9 dispute on behalf of the client.

10 Q. And then there are two more pages that
12:04 11 follow.

12 A. Let's see. 59 is an agency addendum to
13 the standard terms and conditions, and 260 is also
14 an agency addendum to the standard terms and
15 conditions.

12:05 16 Q. And the second one was provided by Vion
17 Holdings apparently?

18 A. That's correct. 260 appears to have been
19 completed by Vion Holdings as the client with
20 CardWorks, I believe, as the agent.

12:05 21 Q. If you could take a look at Exhibit 10 --

22 A. Okay.

23 Q. -- what is this document?

24 A. Pages 271 and 272 are the business
25 information services schedule, and then pages 273

12:06 1 and 274 are the Experian standard terms and
2 conditions.

3 Q. And this governs your relationship with
4 CardWorks, correct?

5 A. This would govern the sale of business
12:06 6 information to CardWorks.

7 Q. And then what is Exhibit 11?

8 A. The pages 140 and 141 are the standard
9 terms and conditions with Advanta Corp.; and the
10 consumer services schedule is page 142, also with
12:06 11 Advanta Corp.

12 Q. And this says, "Effective date,
13 10/12/10." Do you see that?

14 A. I do.

15 Q. Do you know who signed this document
12:07 16 supposedly for Advanta?

17 A. It appears Jodi Plavner.

18 Q. Do you know who that is?

19 A. I do not know Jodi.

20 Q. Was Experian even in the business -- I'm
12:07 21 sorry -- Advanta Bank Corp. of signing documents in
22 that time period?

23 A. I'm not sure I understand. Is Advanta
24 Bank Corp. signing which documents? And by time
25 period, do you mean on this date?

12:07 1 Q. Yes.

2 A. I'm not aware --

3 Q. October 12, 2010.

4 A. I'm not familiar with an agreement that
5 they signed on that date.

12:08 6 Q. And if you'll take a look at
7 Exhibit 12 -- I'm sorry. Let's go straight to 15.

8 A. Okay. I'm at 15.

9 Q. We went through this before. This is the
10 code 1681g, the U.S. code. And the requirement, if
12:09 11 you'll recall, simplified is that Experian shall,
12 upon request, clearly and accurately disclose to the
13 consumer all information in the consumer's file at
14 the time of the request and the sources of that
15 information. And you now understand that's what
12:09 16 this section says, right?

17 A. I do.

18 Q. You have not been a victim of identity
19 theft yourself, right?

20 A. I have not, not that I'm aware of.

12:10 21 Q. You believe -- and I'm now flipping back
22 and forth. You don't have to follow me here, but
23 I'm going to go to your declaration. And you or
24 whoever did your declaration says, "Experian's
25 ultimate goal with regard to the manner in which it